STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner

v **File No. 121905-001-SF**

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this _15th_ day of November 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On June 15, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under Public Act No. 495 of 2006, MCL 550.1951 *et seq.* Act 495 authorizes the Commissioner to conduct external reviews for state and local government employees who receive health care benefits in a self-funded plan.

The Petitioner receives health care benefits through the *State Health Plan PPO* for retirees not eligible for Medicare, a self-funded account. Blue Cross Blue Shield of Michigan (BCBSM) administers the plan. Under Section 2(2) of Act 495, MCL 550.1952(2), the Commissioner conducts this external review as though the Petitioner was a covered person under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.*

The issue in this external review can be decided by a contractual analysis. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

Petitioner required surgery to correct cataracts in both eyes. The surgeries were performed on December 9 and December 21, 2010, at the XXXXX Eye Clinic, an outpatient surgical center that does not participate with BCBSM.

BCBSM provided coverage for the professional fees but denied coverage for the facility fee ruling that XXXXX Eye Clinic is a non-participating, non-credentialed facility for which coverage is excluded. The Petitioner appealed BCBSM's denial through its internal grievance process. BCBSM held a managerial-level conference, and issued its final adverse determination dated April 4, 2011. Petitioner states that while the final adverse determination was dated April 4, 2011, she did not receive it until May 12, 2011. BCBSM does not dispute this assertion. The Commissioner considers the request timely for the purpose of the external review because it was filed within 60 days of the date the Petitioner received the adverse determination letter. See section 11(1) of the PRIRA, MCL 550.1911(1).

III. ISSUE

Is BCBSM required to pay the facility fee for Petitioner's care received at the XXXXX Eye Clinic on December 9 and December 21, 2010?

IV. ANALYSIS

Petitioner's Argument

Petitioner wrote in her request for external review:

> The facility fee for services in December 2010 were not covered as the surgical facility is non-participating and non-credentialed for BCBS. I tried to get answers before the surgery regarding the facility fee. I spoke twice to customer reps and was never told it wouldn't be covered. I don't know what else I could have done to get a correct answer.
>
> * * *
>
> I feel I tried to get an answer to the "facility fee" question and was never given a straight answer. If I had known that expense was not covered, I certainly would have gone elsewhere.

The Petitioner also states it took BCBSM 90 days to issue its final determination when it was supposed to have been done within 35 days.

BCBSM's Argument

In its final adverse determination of April 4, 2011, BCBSM denied the outpatient facility charge:

> You are covered under the State of Michigan *State Health Plan PPO for retirees not eligible for Medicare*. Page 21 of your benefit handbook explains if you choose to go to a nonparticipating hospital or facility when you have adequate access to a network hospital, the State Health Plan PPO will not cover the charges.

> Since the ambulatory surgical facility in question is a nonparticipating and non-credentialed with Blue Cross Blue Shield payment cannot be approved. You remain liable for the total balance.
>
> To give your appeal full consideration, I reviewed the telephone conversation between you and XXXXX, a Blue Cross Blue Shield customer service representative, and did not find any discrepancies in the benefit information provided.

BCBSM also maintains that Petitioner was aware that the facility fees would not be covered. BCBSM argues that in the managerial-level conference hearing Petitioner admitted that the provider advised her that the facility fees would not be covered.

Commissioner's Review

The Petitioner's benefits are described in the *State Health Plan PPO* benefit book as amended by BCBSM's *Rider ASFP(Ambulatory Surgical Facility Program).* The rider excludes coverage for services provided in a non-participating ambulatory surgery facility.

Based on the rider exclusion, the Commissioner finds that BCBSM's denial of coverage of services from a non-participating facility is the correct application of the Petitioner's health care benefit plan.

The Petitioner argues she was misinformed by BCBSM representatives. BCBSM denies Petitioner was misinformed. The Commissioner cannot resolve this factual dispute. Under the Patient's Right to Independent Review Act, the Commissioner's role is limited to determining whether BCBSM properly administered health care benefits under the terms and conditions of the applicable insurance policies and riders. Resolution of factual disputes such as the one described by the Petitioner cannot be part of a PRIRA review because the PRIRA process lacks the hearing procedures necessary to make findings of fact based on evidence such as oral statements.

V. ORDER

Blue Cross Blue Shield of Michigan's final adverse determination of April 4, 2011, is upheld. BCBSM is not responsible for coverage of the facility fee for Petitioner's surgeries at the XXXXX Eye Clinic on December 9 and 21, 2010.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of

Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

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R. Kevin Clinton
Commissioner